

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division**

SOBE NEWS, INC. d/b/a OCEAN DRIVE
MAGAZINE, a Florida corporation,

Plaintiff,

vs.

Case No.: 00-0078-CIV-MOORE

OCEAN DRIVE FASHIONS, INC., a Florida
corporation, and; DROR SVORAI,

Magistrate Judge O'Sullivan

Defendants.

PLAINTIFF'S EXPERT REPORT OF DR. DAN SAREL

COMES NOW, Plaintiff, Sobe News, Inc. ("SOBE"), who files this Expert Report of Dr. Dan Sarel. Dr. Sarel's Biographical Sketch and Curriculum Vitae are attached.

Dr. Sarel will testify that Plaintiff has achieved at least a reasonable level of brand name awareness or identity among the relevant consuming public between it and its trademark OCEAN DRIVE. He will state that Plaintiff enjoys a positive reputation and that it has capitalized on its trademark OCEAN DRIVE, reputation and services to the community. Dr. Sarel's anticipated testimony regarding this matter will include his opinion that a connection has been made by consumers between the trademark OCEAN DRIVE and Plaintiff. Dr. Sarel will also testify as to the similarity of goods, trade channels, customers, and advertising media used by the parties in connection with their respective products and services sold under the marks OCEAN DRIVE.

Dr. Sarel will further testify in rebuttal of Michael Rappeport, Ph.D., identified by Defendants. Dr. Sarel will testify in this regard as to survey performed by Dr. Rappeport, its propriety, methodology, and results. Dr. Sarel will opine that the survey performed does not establish

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that there is no likelihood of consumer confusion between the marks at issue in this cause.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. S. Ross', written over a horizontal line.

RICHARD S. ROSS, ESQ.

Attorney for Plaintiff

Fla. Bar No. 436630

4801 S. University Drive

Suite 3070

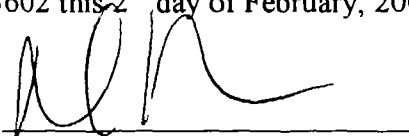
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was deposited with the United States Postal Service as first class mail, and addressed to co-counsel for Plaintiff at: NEAL S. LITMAN, P.A., Grove Plaza - Second Floor, 2900 S.W. 28th Terrace, Coconut Grove, Florida 33133; and to counsel for Defendants at: MALLOY & MALLOY, P.A., 2800 S.W. Third Avenue, Miami, Florida 33129; Robert Brown III, KUBICKI DRAPER, P.A., 25 West Flagler Street, Penthouse, Miami, Florida 33130, and; John C. Hamilton, Esq., WICKER SMITH, 100 North Tampa Street, Suite 3650, Tampa, Florida 33602 this 2nd day of February, 2001.

A handwritten signature in black ink, appearing to read 'R. S. Ross', written over a horizontal line.

Richard S. Ross, Esq.

DR. DAN SAREL

Biographical Sketch

Dr. Dan Sarel is a tenured Associate Professor of Marketing in the School of Business at the University of Miami, and an active marketing consultant specializing in brand and trademark management, communication and marketing research. Dr. Sarel has extensive business experience with leading corporations. Dr. Sarel views his major role as ensuring that the voice of the customer will always be considered in business decisions.

Dr. Sarel holds a BA in Economics (1972) and MBA (1974) from the Hebrew University of Jerusalem. In 1978 he received his Doctorate in Business from Harvard University specializing in Marketing. Dr. Sarel has taught many marketing management, promotion and services marketing courses at the Graduate and MBA level. He is actively involved in designing and teaching Executive Education programs in the United States, the Caribbean, South America and Europe. Participants in these programs have included executives from leading corporations such as American Bankers, American Express, AT&T, Barnett Bank, Baxter Diagnostics, Blockbuster, Cordis, Disney, First Union, GE, Martin Marietta, Publix Supermarkets, Ryder, Texaco and Xerox to name a few.

As a prolific writer, Dr. Sarel has published many articles in the leading publications. His writings have appeared in the Journal of Marketing, Journal of the Academy of Marketing Science, Journal of Business Research, Journal of Advertising, Journalism Quarterly, the Economist Travel and Tourism Analyst, International Journal of Business Logistics, Journal of Health Care Marketing, Journal of Personal Selling and Sales Management and other publications. Dr. Sarel has presented numerous papers in national and international conferences on marketing, advertising, tourism, customer satisfaction and other business topics. Dr. Sarel is frequently interviewed by local and national media on consumer perceptions, behavior, and satisfaction issues.

For over 20 years Dr. Sarel has been actively involved in marketing consulting with many leading corporations. Dr. Sarel specializes in helping firms improve profitability, increase retention, and attract new customers. He has been responsible for designing and implementing market research and information systems generating practical strategic and tactical recommendations.

Dr. Sarel has worked for or conducted studies on behalf of: Mitsubishi Heavy Industries, Hilton Hotels, PrimeTime TV, Citicorp, Saatchi and Saatchi, First Union National Bank, Miami Heart Hospital, Miami Children Hospital, Physician Corporation of America, CAC/Ramsey, The Palace Group, UltraMedix, PHP, Sterling Group, Orient Express, CLIA, Royal Caribbean Cruise Line, Royal Viking Cruise Line, Crystal Cruise Line, Commodore Cruise Line, Norwegian Cruise Line, Pan Am, Field of Flowers, BBDO, Burson Marsteller, Beber and Silverstein, Tinsely Advertising, Pulte Homes, City of Coral Springs, Holland &

Knight, and other national and international corporations.

UNIVERSITY OF MIAMI

Curriculum Vitae

1. Date: December 19, 1997

PERSONAL

2. Name: Dan Sarel
- 3a. Home Phone: 251-6005 3b. Office Phone: 284-1772
4. Home Address: 10100 S.W. 142nd Street, Miami, FL 33176
5. Employment Status: Full-time
6. Current Academic Rank: Associate Professor
7. Primary Department: Marketing
8. Citizenship: USA

HIGHER EDUCATION

10. Institutional
 - Doctor of Business Administration - Graduate School of Business Administration
Harvard University, November, 1978
 - Post-Graduate Studies - Graduate School of Management
University of California at Los Angeles, 1975
 - Master of Business Administration - (with distinction-highest honors),
Hebrew University of Jerusalem, 1974
 - Bachelor of Arts - (with distinction-highest honors) in Economics
Hebrew University of Jerusalem, 1972

EXPERIENCE

13. Instructional:
 - School of Business Administration, University of Miami
Associate Professor, 1983-present

School of Business Administration, University of Miami
Assistant Professor, 1981-1983

School of Business Administration, University of Connecticut
Assistant Professor, 1978-1981

School of Business Administration, Northeastern University
Instructor, 1978

14. Professional:

Harvard Business School
Research and Case Development, 1977

Jerusalem Institute of Management
Research and Course Development, 1976

Graduate School of Management, University of California at
Los Angeles, Research Assistant, 1975

Graduate School of Business Administration, Hebrew University
Research and Teaching Assistant, 1972-1974

Bank of Israel
Research Assistant, 1970-1971

15. Military: Israeli Defense Army, 1966-1969

PUBLICATIONS

16. Books and Monographs Published:

"Consumer Evaluation Strategies", Working Paper, HBS 78-17,
School of Business Administration, Harvard University (1978).

D.B.A. - An Investigation of the Effect of Risky Attributes on
Consumer Evaluation Strategies. Chairman, Professor David J.
Reibstein (Boston, 1978)

M.B.A. - Consumer Store Loyalty - An Analysis in the Shoe and
Furniture Industries. Supervisor, Professor Arie Goldman
(Jerusalem, 1974)

17. Juried or Refereed Journal Articles:

"Improving the Effectiveness of Banks' Service Guarantees: The Role of
Implementation" *Journal of Financial Services Marketing*, Vol. 5, Number 3,

March 2001 (with H. Marmorstein)

Increasing the Persuasiveness of a Service Guarantee: The Role of Service Process Evidence, *Journal of Services Marketing* (forthcoming) with H. Marmorstein)

The Role of Service Recovery in HMO Satisfaction, *Marketing Health Services* (formerly *Journal of Health Care Marketing*), Lead article, Spring 1999, PP 7-15 (with H. Marmorstein)

"Managing the Delayed Service Encounter: The Role of Employee Action and Customer Prior Experience", *Journal of Services Marketing*, Vol. 12, 3, 1998, 195-208 (with H. Marmorstein).

Also reprinted by *International Journal of Bank Marketing*, Vol 17, #6 pp 286-294

"Market Expansion Strategies", *Health Care Business Digest*, Vol. 3, No. 2 (February 1998) (with H. Marmorstein).

"Managing The Failed Service Encounter: How Employee Actions Affect Consumer Response to Delays," at the Sixth Annual AMA Frontiers in Services Conference, Nashville, TN October 1997 (with H. Marmorstein).

"Identifying New Patient Prospects: Efficacy of Usage Segmentation", *Journal of Health Care Marketing* (Winter 1996)(with H. Marmorstein).

"The Impact of Customer Satisfaction Based Incentive Systems on Salespeople's Customer Service Response: An Empirical Study", *Journal of Personnel Selling and Sales Management*, Vol. XV No. 3 (Summer 1995)(with A. Sharma).

"Examining the Effectiveness of Service Guarantees: The Role of Process, Specificity, and Prior Experience", European Marketing Conference, Copenhagen May 1995 (with W. Lassar, H. Marmorstein).

"Expanding the Market for 'Unsought' Services: The Efficacy of Usage-Based Segmentation", at the AMA Frontiers in Services Conference, Nashville, TN October 1994 (with H. Marmorstein).

"An Analysis of Advertisements in the Journal of the American Academy of Dermatology 1980 & 1990", *Journal of the American Academy of Dermatology*, 1993(with D.J. Hogan et. al.).

"Linking Employee Compensation to Customer Satisfaction - an Exploratory study" at the AMA Frontiers in Services Conference, Nashville, TN October 1993 (with A. Sharma).

"Customer and Non-Customer Perceptions of Third Party Services: Are They Similar". The International Journal of Logistics Management, Vol. 3, No. 1, 1992, pp. 12-21.

"Service Quality and Customer Satisfaction Monitoring Systems: An exploratory Analysis". Presented at the AMA Service Marketing Conference "Frontiers in Services", Nashville, TN 1992.

"The Influence of Type of Advertisement, Price and Source Credibility on Perceived Quality", Journal of the Academy of Marketing Science, Vol 20 No. 3, 1992 (with J. Gotlieb).

"Comparative Advertising Effectiveness: The Role of Involvement and Source Credibility" Journal of Advertising, Vol. 29 No. 1 (1991) pp. 38-45 (with J. Gotlieb).

"Perceived Quality and Consumer Satisfaction: Effects of Price Advertisements on Perceived-Quality of Purchase Intentions", Journal of Business Research, Vol. 22 No.3 (May 1991) pp. 195-210 (with J. Gotlieb).

"Measuring Perceived Quality and Satisfaction: The Experience of the Cruise Line Industry", Travel and Tourism in Transition: The Research Challenge, ESOMAR, Dublin (May 1991) pp. 129-142.

"Cruise Industry in the USA: Matching Supply and Demand by 1990", The Economist Travel and Tourism Analyst, August, 1986, pp. 43-52 (with J. Lewis).

"Characteristic of Radio Commercials and their Recall Effectiveness", Journal of Marketing Vol. 50 (January 1986), pp. 52-60 (with M. Sewall).

This article is reprinted in Bellur, Berkman and Lee, Readings In Advertising, University Publisher and Printer, Hong Kong (1986).

"Decisions to Adopt New Medical Technologies: A Case Study of Thrombolytic Therapy", Social Science and Medicine, Vol. 21, No. 3, pp. 291-298 (with D. Becker and L.B. Gardner).

"A Comparative Analysis of Models of Consumer Decision Under Risk", 1984 Southern Marketing Association.

"Trends in Factual Claims in Magazine Ads: 1958, 1968, 1978",
Journalism Quarterly, Vol. 61, No. 3 (Autumn 1984) pp. 650-654, 743.

This article is reprinted in Bellur, Berkman and Lee, Readings In Advertising, University Publisher and Printer, Hong Kong (1986).

"A Comment on a Model and Methodology for the Development of Consumer Information Programs", Journal of Marketing, Volume 47, No. 3 (Summer, 1983), p. 103-107.

"Choosing Between Discrete Marketing Policy Alternatives Under Uncertain Market Response Conditions", Journal of the Academy of Marketing Science, Volume 12, No. 3 (Winter, 1984), (with J. Yassour).

"Consumer (Mis) Perceptions and Usage of Certification Marks, 1972 and 1980: Did Public Policy Have an Impact?", Journal of Marketing (Summer, 1981), (with M.V. Laric).

This article is reprinted in Bellur, Berkman and Lee, Readings In Advertising University Publisher and Printer, Hong Kong (1986).

"Using Cumulative Pretests Experiences to Improve the Effectiveness of Radio Commercials" (with M. Sewell) European Society for Opinion and Marketing Research, conference in Monte Carlo (Monaco) January 1983. Published in ESOMAR's Seminar on Effective Advertising-Can Research Help? pp. 149-162.

"Food Shopping Behavior in Stagflationary Times: The Experience in the U.S.A." 1983 meeting of the International Association for Research in Economic Psychology in Bologna, Italy.

"Models of Behavioral Choice Under Risk; A Review", Proceedings of the 1982 Southern Marketing Association, November, 1982.

"Advances in Environmental Psychology - A New Perspective on Consumer Behavior", K. Bernhardt et. al. (eds) The Changing Marketing Environment; New Theories and Application, American Marketing Association, 1981 (Annual Educators Conference) pp. 135-138.

"Consumer Evaluation Under Uncertainty: "Comparative Analysis of the Vector and Expected Utility Models". American Institute for Sciences proceedings of Western Division Conference, 1981.

"Preference Modeling of Managerial Marketing Decision Making", In: D.B. Montgomery and D.R. Wittink (eds.), Marketing and Measurement Analysis Marketing Science Institute Report No. 80-103, 1980, pp. 378-385 (Special ORSA/TIMS Conference on Market Measurement and Analysis), (With P. Cattin).

"An Exploratory Investigation of the Managerial Implications of 'Generic' Brands", In: R.P. Bagozzi et al (ed.). Marketing into the 80's - Changes and Challenges, American Marketing Association, 1980, (Annual Educators Conference), (with M. Sewall).

"Product Positioning - A Reassessment", In: C.W. Lamb, Jr. and P.M. Dunne

(eds.). Theoretical Developments in Marketing, American Marketing Association, 1980, pp. 116-119 (Special Conference on Marketing Theory).

"Is Expected Utility a Descriptive Model of Consumer Decision Making Under Uncertainty?" In: H.S. Gitlow and E.W. Wheatley (eds.) Developments in Marketing Science, 1979, pp. 33- 37 (Annual Conference, Academy of Marketing Science).

"Meeting the Competitive Challenge: A Search for New Strategies in Xerox", presented in the 1979 National Intercollegiate Case Clearing House (No. 9-580-672), (with M.V. Laric).

18. Other Publications:

"What do Purchasers Really Want - Understanding Needs of Decision-Making Processes", Annual Meeting of Seatrade, Miami, Florida 1988.

"The Yacht-like Cruise Market", Annual Meeting of Seatrade, Miami, Florida 1987.

"A Comparative Analysis of Models of Consumer Decision Under Risk", University of Connecticut Working Paper, 1981.

"Consumers Perception and Use of Composite Information Measures-Empirical Findings and Policy Implications", Annual meeting of the European Economic Psychologists, Leuven Brussles, 1980.

"Modeling Marketing Managers' Decisions", University of Connecticut Working Paper, 1979, (with P. Cattin).

"Comments on Perceived Risk and Composition Models for Multi-Attribute Decisions", University of Connecticut Working Paper, 1979.

"Meeting the Competitive Challenge: A Search for New Strategies in Xerox", presented in the 1979 National Conference of A.I.D.S. and distributed as a case by the Intercollegiate Case Clearing House (#9-580-672), (with M.V. Laric).

"Witco Chemical LTD (Israel) - A case developed for the Jerusalem Institute of Management. (1977).

"Iscar LTD (Israel)" - A case developed for the Jerusalem Institute of Management (1977).

"Envirodata" - A case developed at the Harvard Business School and distributed by the Intercollegiate case Clearing House (1977).

19. OTHER WORK FOR PUBLICATION:

"Effective Monitoring of Service Delivery" to be submitted to Sloan Management Review (with H.Marmorstein).

"Effective Communication of Service Guarantees" to be submitted to Journal of Business Research (with H.Marmorstein and W. Lassar)

"Customer Mix Management" to be submitted to the Journal of Marketing (with A.Parasuraman and H.Marmorstein)

20. Editorial Responsibilities:

Reviewed papers for the Journal of Advertising, Journal of the Academy of Marketing Science, American Marketing Association, American Academy of Advertising, Southern Marketing Science. Book review for Business Publications, Inc. Kent Publishing Company, Prentice Hall.

21. PROFESSIONAL AND HONORARY ORGANIZATIONS:

American Marketing Association, 1978 to present
Association of Consumer Research, 1979 to 1985
American Institute of Decision Sciences, 1978 to 1985
European Economic Psychologists, 1980 to 1990
Travel Research Association, 1977 to 1992
American Academy of Marketing Science, 1978 to present

22. HONORS AND AWARDS:

Outstanding Young Man of America - 1980
Hyman J. Shaber Fellowship - 1976/77
Graduate School of Business Administration, Harvard University
Annual Fellowships - 1975/76, 1976/77, 1977/78
University of California at Los Angeles - International Students
Exchange Fellowship - 1975
Graduate School of Business Administration, Hebrew University,
Annual Fellowships - 1972/73, 1973/74
Faculty of Social Sciences, Hebrew University
Annual Scholarships and Special Awards - 1970/71, 1971/72, 1972/73

23. POST-DOCTORAL FELLOWSHIPS: None

24. TEACHING SPECIALIZATION:

Services Marketing, Marketing Management, Advertising & Promotion,
Healthcare Marketing, eCommerce

25. RESEARCH PERFORMED:

"Utilization of Survey Evidence in Trademark Infringement Cases:
Problems and Potential"

"Consumer Feedback Systems"

"Medical Advertising"

"Marketing Opportunities in the 50+ Market - A Framework for Action".

University of Miami Summer Research Support 1981, "Intertype Store
Patronage and Consumers Shopping Behavior in Inflationary Times: The
case of the Grocery Industry"

Marketing Science Institute: A grant for exploratory study on generic
products (with Murphy A. Sewall), 1979.

University of Connecticut Research Foundation Award, 1979. "A
Longitudinal Analysis of Communication Strategies in the Print Media".

"Characteristics Leading to Significant Differences in Recall Rates for
Radio Commercials", sponsored by Radio Recall Research, Holmdel, New
Jersey.

"Product Bundles - A Theoretical Examination (tentative title)", first draft
was written.

"Modeling Behavioral Decisions: A Review", first draft was written (with
P. Cattin).

Other Research see Nos: 16, 17, 18, 19.

26. THESIS AND DISSERTATION ADVISING:

Executive MBA Graduate Thesis Advising, University of Miami, 1983 -
present.

Graduate Thesis advising University of Connecticut, 1979 - 1981.

27. UNIVERSITY COMMITTEE AND ADMINISTRATIVE RESPONSIBILITIES:

University of Miami:

University Level

Graduate School Member

Accreditation Review Committee Member

Technical Support Committee Member

School of Business Level

School Council Member 1982 - 1986, 1996 -present
Gold Fund Member 1986 - 1995
Ph.D. Committee member 1986 - 1990

Faculty Advisory Committee 1990 - present
Master of Science in Quality Planning
Committee 1991 - present
MBA Enhancement Committee 1991 - 1992
Department of Marketing
Recruiting Committee Member
Advertising Major Committee Member

University of Connecticut Committee Work
Bowater Prize in Marketing-Chairperson
Marketing Internship - Chairperson
Undergraduate Curriculum and Courses - Member
Marketing Research Forum - Member

28. COMMUNITY ACTIVITIES:

Voluntary Marketing Consultant for Windham Hospital, and the New England J.N.F.

Small Business Administration programs - presentations, Metro Dade County - Selection Committees

Bet Shira School - Board of Education Member

29. OTHER PROFESSIONAL INFORMATION OR ACTIVITIES:

Presentation before the Life Insurance Marketing Research Association, Hartford, Connecticut, 1979.

Coauthored a paper presented by P. Cattin, at a marketing research conference, Brussels, Belgium, March 1979.

Comoderator of sessions in the Fifth and Sixth Annual Conferences on Strategic Planning cosponsored by the American Marketing Association and the University of Connecticut.

Presentation at the 1980 Marketing Research Forum organized by the University of Connecticut for marketing executives.

Institute De Estudios Superiores de Administracion (IESA) Caracas, Venezuela,

Summer 1983 - taught an Executive Course in Advertising.

In-House Presentation for Corporate Affiliates 1991

Presentation at the UM Quality Day entitled, "Market Driven Quality - The Voice of the Customer"

Key note speaker at the Florida International Bankers Association meeting held by the Supporting Members on Service Marketing - Competing Through Quality and long Term Relations.

Federal, State and County Courts: Expert witness testimonies

Guest Speaker - A variety of local and national companies

Media Exposure - interviewed by local and national newspapers, magazines, radio and television.

Marketing Consultant to a variety of local, national, and international companies.